

Article IVC: Fishkill Creek Development District ~~[Added 11-1-2010 by L.L. No. 14-2010]~~

§ 223-41.12 Purposes.

DRAFT 9/7/17

Purposes of the Fishkill Creek Development (FCD) District are to:

- A. Encourage the development and/or redevelopment of undeveloped or underutilized industrial properties along the Fishkill Creek in a manner that provides a mix of residential and nonresidential uses. Properties in this category are generally more remote from the Central Business District than other under-utilized industrial sites, and are not as well suited to continued industrial development ~~as properties on the north end of the Fishkill Creek corridor.~~
- B. Establish and preserve open space corridors along Fishkill Creek and the Hudson River, and seek open space linkages to the large areas of open space in the Hudson Highlands on the slopes of Mount Beacon.
- C. Continue to develop greenways along the Hudson River and Fishkill Creek for public recreation, and provide linkages to trails towards the Hudson Highlands and the slopes of Mount Beacon. Improve boat access to Fishkill Creek and the Hudson River. Determine the future use of the railroad tracks along Fishkill Creek for vehicles capable of utilizing the tracks or for a bicycle and pedestrian path, and implement the decision.

§ 223-41.13 Uses; plan review; design standards.

- A. This article establishes a comprehensive review for land uses in the Fishkill Creek Development District. Development within the Fishkill Creek Development District shall be governed by this article, except to the extent that this article specifically incorporates by reference other sections of this chapter. In the event that any other provision of this chapter is inconsistent with the provisions of this article, then the provisions of this article shall control.
- B. Principal uses permitted by special permit. A Fishkill Creek development may be a single use, or a mixed use which incorporates various permitted land use elements as part of a comprehensive development plan. These elements may include:
 - (1) Apartment, attached and multifamily dwellings.
 - (2) Artist live/work spaces, artist studios and workshops of artisans.
 - (3) Bed-and-breakfast establishments and inns.
 - (4) Spas, fitness centers/noncommercial swimming pools, exercise studios, and day-care centers, ~~and similar uses as determined by resolution of the City Council.~~ Such uses shall be permitted on the ground floor and second floor of the buildings facing that face streets.
 - (5) Restaurants and other eating and drinking establishments. Such restaurants and other eating and drinking establishments shall be permitted on the ground floor and second floor of the buildings facing that face streets. No individual restaurant use shall contain more than 5,000 square feet of gross floor area.
 - (6) Professional and small business offices on the ground floor and second floor of buildings facing the that face streets.
 - (7) Galleries, exhibit spaces and museums.
 - (8) Community facilities that complement residential and commercial uses, such as public or semipublic performance and cultural centers, live theaters, concert halls, meeting rooms suitable for social, civic, cultural or education activities, bandshells, kiosks and gazebos.
 - (9) Assembly and other light industrial uses, ~~as determined by the City Council,~~ in fully enclosed buildings and not including any form of outdoor storage.

(10) Other uses similar to the above uses as determined by resolution of the City Council.

C. Permitted accessory uses. Permitted accessory uses may include:

- (1) Uses which are clearly incidental to, and customarily found in connection with, the permitted principal uses. Exterior display of goods on special event days/weeks may be permitted, subject to the issuance of a permit by the City. Exterior storage is not allowed. Outdoor seating for restaurants and pedestrian-oriented accessory uses, such as flower, food or drink stands, are permitted.
- (2) Parking and bicycle facilities, including parking structures.

D. Procedure for review of Fishkill Creek development proposals.

(1) Each Fishkill Creek development project shall require:

- ~~(a) Concept plan approval by the City Council;~~
- (a) Special permit approval by the City Council Planning Board; and
- (b) Site plan approval by the Planning Board.

(2) ~~The City Council's review of a special permit application for a Fishkill Creek development project shall include review of a Fishkill Creek development concept plan, which contains a proposed designation of the appropriate land uses, or a range of land uses, for the overall development of the applicant's land holdings in the FCD District. The purpose of this review is to assure that the FCD District will be developed in accordance with an overall comprehensive plan, even though the total Fishkill Creek Development District may consist of more than one separate FCD project, which might be constructed at different times.~~

(3) ~~The Planning Board may commence its review of a site plan for one or more Fishkill Creek development projects as soon as an application for such Fishkill Creek development special permit has been submitted to the City Council, and such reviews may proceed simultaneously. However, no final approval of a site plan for any Fishkill Creek development project shall precede the issuance of a special permit for such FCD project by the City Council.~~

E. Application fees. Applications to the ~~City Council and~~ Planning Board as provided herein shall be accompanied by the appropriate fees which may be set from time to time by the City Council for such applications. If such fees are not sufficient to defray the costs of review, the applicant shall also be required to pay such additional fees as may be necessary for the reasonable expenses of technical assistance to the City in reviewing the technical aspects of the application.

F. Procedure for special permit ~~and Fishkill Creek development concept plan~~ review.

(1) Application. The application for a Fishkill Creek development special permit for one or more FCD projects ~~shall be submitted to the City Council. The application shall consist of narrative text, drawings and/or illustrations describing the proposed Fishkill Creek development project and concept plan. All application materials, including plans, shall be submitted in electronic file format acceptable to the Building Department, in addition to at least five paper copies (or such other format or amount as determined by the Building Department), at least two weeks prior to the City Council meeting at which it will be considered. Drawings shall be submitted approximately to scale, but need not be to the precision of a finished engineering drawing or a final site plan. The application shall include the following:~~
[Amended 4-21-2014 by L.L. No. 1-2014]

- ~~(a) A written description of the Fishkill Creek development project(s) and concept plan, and a description of the manner in which such proposal meets the purposes of the Fishkill Creek Development District; how it is consistent with the City of Beacon Comprehensive Plan and, if applicable, Local Waterfront Revitalization Plan; and the manner in which the public interest would be served by the proposed Fishkill Creek development, including a description of the benefits to the City.~~

- (b) A land use plan showing the various proposed land uses and their spatial arrangement, including the proposed general location of buildings, parking areas, public, community and/or recreation facilities, utility and maintenance facilities and open space.
 - (c) An indication of the approximate square footage of buildings, the approximate number of dwelling units of each housing type and size, and the approximate amount of floor area of each type of nonresidential use.
 - (d) An indication of the appropriate number of parking and loading spaces in relation to their intended use.
 - (e) A general indication of any phasing of construction.
 - (f) The general configuration of the interior road system, connection/access to the adjoining road system, and an analysis of the need for and the feasibility of providing emergency access.
 - (g) A ~~Fishkill Creek development concept~~ plan showing the relation of the proposed uses to existing and proposed uses adjacent to the site that are not part of the application. If no such adjacent uses have been proposed, the applicant shall discuss potential uses for such other parcels.
 - (h) The general configuration of the pedestrian circulation system, ~~and~~ the connection of such pedestrian passageways to adjoining properties, and a description of how the proposal is consistent with the Fishkill Creek Greenway and Heritage Trail Master Plan.
 - (i) The proposed architectural treatment of views and viewing points from the site to Fishkill Creek; to the site from Fishkill Creek; and over the site from important viewsheds, including those identified in the LWRP.
 - (j) Descriptions, sketches, sections and elevations showing the general architectural treatment and design scheme contemplated for the entire development and specifically for any public spaces or major elements of the plan.
 - (k) Such additional information as the ~~City Council~~ Planning Board may deem necessary in order to properly evaluate the application.
- (2) ~~City Council~~ Review of special permit and Fishkill Creek development concept plan application.
- ~~(a) Environmental compliance.~~
 - (a) The approval of a Fishkill Creek development project is an action subject to the State Environmental Quality Review Act (SEQRA), and all proceedings to review such project shall comply with the applicable requirements of SEQRA.
- ~~{2} Upon receipt of an application for a special permit and Fishkill Creek development concept plan, the City Council shall commence a coordinated review under SEQRA and institute lead agency procedures after identifying all involved and interested agencies, as provided by law.~~
- ~~{3} To the extent possible in accordance with law, any draft environmental impact statement (DEIS) required in connection with the special permit and Fishkill Creek development concept plan approval shall be sufficiently specific so as to eliminate the need for additional and/or supplemental DEIS's during the site plan stage of the approval process.~~
- ~~{4} To the extent possible in accordance with law, the preparation of any required DEIS shall be integrated into the existing agency review processes and should occur at the same time as the other agency reviews, including the special permit and Fishkill Creek development concept plan review. When a SEQRA hearing is held, it should be conducted jointly with other public hearings on the proposed action, whenever practicable.~~
- (b) Enhanced public transportation, jitneys and other alternative means of travel between the FCD, Main Street and the Hudson Riverfront, as well as the developer providing his fair share of the funding of such alternative means of travel, shall be considered as important methods of mitigating potential traffic and parking impacts resulting from the FCD.

~~(b) City Council referrals.~~

~~[1] The City Council shall refer the application for a special permit and Fishkill Creek development concept plan approval to the Planning Board for a report and recommendation. The Planning Board shall review all documents and materials relating to the application and shall render a report to the City Council and may make any advisory recommendations it deems appropriate. Where the City Council is serving as the lead agency under SEQRA, where the Planning Board is an involved agency, and where a DEIS is required, then this referral may be coordinated with the comment period under SEQRA. The report of the Planning Board shall be due on the date set for receipt of written comments on the DEIS or a date 45 days from the referral by the City Council, whichever is greater.~~

~~[2] Other referrals. The City Council shall comply with the applicable provisions of General Municipal Law §§ 239-l and 239-m. Where the City Council is serving as lead agency under SEQRA, and where a DEIS is required, it shall circulate the DEIS and FEIS as provided by law. In addition to any referrals required by law, the City Council may refer the application to any other City board, department, official, consultant or professional it deems appropriate.~~

~~(c) City Council Public hearing. The City Council Planning Board shall hold a public hearing, with the same notice required by law for zoning amendments, on the application for a special permit and Fishkill Creek development concept plan approval. Where the City Council is serving as lead agency under SEQRA, and where a DEIS is required, the Any required SEQRA hearing shall be conducted jointly with this public hearing, if practicable.~~

~~(3) City Council Decision on special permit and Fishkill Creek development concept plan.~~

~~(a) The City Council shall render a decision on the application for Fishkill Creek development concept plan approval and for a special permit after it has held the required public hearing herein, completed the SEQRA process and has made the requisite SEQRA determination of significance and/or findings, and has made the consistency determination as required under the City's Local Waterfront Consistency Law. [1]~~
~~[1] Editor's Note: See Ch. 220, Waterfront Consistency Review.~~

~~(b) Concept plan approval. Prior to granting any special permit for a Fishkill Creek development project, the City Council shall review a Fishkill Creek development concept plan, which contains a proposed designation of appropriate land uses, or a range of land uses, for the overall development of the FCD District. The City Council shall approve the concept plan upon a finding that it:~~

~~[1] Will fulfill the purposes of the Fishkill Creek Development District; and~~

~~[2] Will be in harmony with the appropriate and orderly development of the City.~~

~~(a) Special permit approval. The City Council Planning Board may authorize the issuance of a special permit for a Fishkill Creek development project, provided that it shall find that the following conditions and standards have been met:~~

~~[1] The proposed Fishkill Creek development project will fulfill the purposes of the Fishkill Creek Development District and is otherwise in the public interest.~~

~~[2] The proposed Fishkill Creek development project complies with § 223-41.13 l(16), Fishkill Creek buffer, of this chapter.~~

~~[3] The proposed Fishkill Creek development project meets the Fishkill Creek development design standards set forth in § 223-41.13 l, to the extent applicable at the special permit stage.~~

~~[4] The proposed Fishkill Creek development project is consistent with the City's Comprehensive Plan, Local Waterfront Revitalization Program (if applicable), and Fishkill Creek Greenway and Heritage Trail Master Plan and will not hinder or discourage the appropriate development and use of adjacent lands.~~

~~[5] The Fishkill Creek development is in accordance with the approved FCD concept plan.~~

[5] The proposed Fishkill Creek development project is planned as a cohesive unit, with a comprehensive plan for ingress, egress, open space, landscaping, signage, circulation and utility service; the land uses are complementary; and the architectural styles are compatible and attain high standards of design.

[6] The land uses in the proposed Fishkill Creek development project relate, visually and functionally, with surrounding land areas and land uses, and shall relate compatibly with other elements of the Fishkill Creek corridor.

[7] The Fishkill Creek development project shall be sensitive to the site's relationship to the Fishkill Creek and shall be designed accordingly.

[8] The FCD site is proposed to be developed in such a way as to maximize important views and view corridors throughout the development; and site layout and design has incorporated, protected and/or enhanced important views and view corridors, including those identified in the LWRP.

(b) Conditions. In approving any ~~Fishkill Creek development concept plan and~~ special permit, the ~~City Council~~ Planning Board may attach such conditions, safeguards and mitigation measures as it deems necessary or appropriate to assure continual conformance to all applicable standards and requirements and to fulfill the intent and purposes of this chapter.

~~(4) Time periods for development pursuant to special permit. At the time of approving a special permit, the City Council may set forth the time period in which construction is to begin and be completed. The City Council may, in its discretion, extend any time period it has previously set where it finds that changing market conditions or other circumstances have acted to prevent the timely commencement or completion of work, and that the developer has proceeded with reasonable diligence in an effort to assure completion of the work within the permitted time period. The extension of these time periods shall not require the holding of a new public hearing.~~

~~(5) Revisions to Fishkill Creek development special permit. After approval of a FCD special permit, any proposed revisions in the approved special permit shall be submitted to the City Council. The City Council, in its discretion, shall determine the appropriate procedures for consideration of the proposed revisions, and whether such revision is material enough to require further environmental analysis, further project review and/or a further hearing, as it may deem appropriate.~~

G. Site development plan review. After approval of the Fishkill Creek development special permit ~~by the City Council~~, the Planning Board may grant site plan approval to a Fishkill Creek development project.

(1) Application for site plan approval. The application for site development plan approval shall contain all the material set forth in § 223-25 B of this chapter. In addition, the applicant shall submit the following:

(a) Information to establish that the proposed site plan complies with § 223-41.13 I(16), Fishkill Creek buffer, of this chapter.

(b) Information to establish that the proposed site plan meets the Fishkill Creek development standards set forth in Subsection I below.

(c) Information to establish that the proposed site plan is in substantial conformance with the approved ~~Fishkill Creek development concept plan and~~ special permit.

(d) Elevations showing the architectural and design treatment of all buildings, public and open spaces and other site plan elements.

(e) Information to establish the relationship of the proposed project to later elements of the development of the FCD District, including any other adjacent and nearby lands that are not part of the applicant's Fishkill Creek development project(s).

- (f) Such other information as the Planning Board may reasonably require in order to evaluate the site plan application.
- (g) Application fees as required pursuant to Subsection E above.

(2) Planning Board review of site plan.

- (a) The Planning Board shall conduct a detailed review of the adequacy, location, arrangement, design and appearance of each aspect of the proposed development. While the scope of the Planning Board's review of the site plan will generally relate to the FCD project at issue, the Planning Board shall have the authority to assure that aspects of the overall development of the FCD District (e.g., stormwater management, domestic water and fire protection, sanitary sewer, all utilities, streets, etc.) shall be adequate to suit the purposes and needs of the entire FCD District, as it is finally developed.
- (b) In acting on any site development plan application, the Planning Board shall take into consideration any approved special permits ~~and Fishkill Creek development concept plans~~, the proposed design and layout of the entire FCD District, including the proposed location, height and landscaping of buildings, traffic circulation within and without the site, provision of off-street parking, exterior lighting, display of signs, landscaping, buffer areas and open spaces, and architecture and design, so that any development will have a harmonious relationship with the existing or permitted development of contiguous land and of adjacent neighborhoods, and so that pedestrian and vehicular traffic will be handled adequately and safely within the site and in relation to the adjoining street system. Particularly, the Planning Board shall assure that the proposed site plan meets the Fishkill Creek development design standards set forth in Subsection I below.
- (c) ~~The proposed site development plan shall be in general conformance with the Fishkill Creek development concept plan.~~ The site plan for a particular Fishkill Creek development project will provide detailed building envelopes, elevations and site design details. ~~The Planning Board may exercise its discretion in allowing minor variations from the Fishkill Creek development concept plan so long as the site plan is, in the Planning Board's judgment, generally in keeping with the Fishkill Creek development concept plan approved by the City Council.~~ In no case, however, shall the Planning Board have the authority to approve a total number of dwelling units and/or an amount of nonresidential floor area in the Fishkill Creek development project which exceeds the number(s) approved as part of the special permit ~~and Fishkill Creek development concept plan~~.
- (3) Time period for construction. ~~Notwithstanding § 223-41.13 F(4) of this chapter,~~ At the time of approving the site plan, the Planning Board may set forth the time period in which construction is to begin and be completed. The Planning Board may, in its discretion, extend any time period it has previously set where it finds that changing market conditions or other circumstances have acted to prevent the timely commencement or completion of work, and that the developer has proceeded with reasonable diligence in an effort to assure completion of the work within the permitted time period. The extension of these time periods shall not require the holding of a new public hearing. ~~Where the authority granted under this section and § 223-41.13F(4) may be in conflict, the latter section shall control.~~
- (4) Adjustments to site plan during construction. During the construction of an approved site plan, the Building Inspector or the City Engineer may authorize minor adjustments to the approved plans which are consistent with the overall approved site plan, when such adjustments appear necessary in the light of technical or engineering considerations which develop during actual construction, or when such adjustments are required in order to comply with law, rules or regulations made applicable to the subject property by any agency or instrumentality of the United States, New York State, Dutchess County or City government. The Building Inspector or City Engineer may, in his discretion, refer any such proposed change to the Planning Board for review. The Planning Board may determine to treat the modification as a minor site plan adjustment under this section or to treat it as a site plan amendment under Subsection G(5) below. If treated as a minor site plan adjustment, the Planning Board may authorize the Engineer or Building Inspector to approve the requested change.
- (5) Site plan amendments. If the Planning Board determines that the character of the proposed changes requires a site plan amendment, the Planning Board shall process the application as an amended site plan under this Subsection G(5) and shall have the discretion to determine the extent of further environmental analysis and project review that is required. After appropriate review, the Planning Board shall approve any site plan amendment by resolution.

H. Subdivision within a Fishkill Creek development. The Planning Board may review any proposed subdivision application within a Fishkill Creek development at any time. Any requests for subdivision approval shall follow the procedures set forth in Chapter 195, Subdivision of Land, of the City Code. The bulk standards, setbacks and other dimensional requirements of the FCD District shall apply to the gross land area of the total Fishkill Creek development project, whether or not the gross land area is or will remain in one ownership, and shall not apply to individual or subdivided lots.

I. Fishkill Creek development design standards. Fishkill Creek development shall meet the following standards:

- (1) Comprehensive design. The FCD District allows for flexibility of design to encourage innovative site planning. While the FCD District may contain various use elements (e.g., residential, retail, restaurant, etc.), the FCD District must be planned as a cohesive unit, with a comprehensive plan for ingress, egress, open space, landscaping, signage, circulation and utility service. Additionally, proposed land uses must be complementary. The architectural styles must be compatible and must attain high standards of design.
- (2) Relationship to uses on surrounding public property. The land uses in a Fishkill Creek development project shall relate, visually and functionally, with surrounding land areas and land uses, and shall relate compatibly with other elements of the Fishkill Creek corridor.
- (3) Relationship to Fishkill Creek. The FCD project shall be sensitive to the site's relationship to the Fishkill Creek and shall be designed accordingly.
- (4) Provision of view corridors. The site shall be developed in such a way as to maximize important public views and view corridors throughout the development. Site layout and design shall consider important public views and view corridors including those identified in the LWRP. Important views shall be protected and/or enhanced to the maximum extent practicable.
- (5) FCD design principles and standards.
 - (a) Architecture and building materials shall be evaluated in the context of high quality examples of Hudson Valley regional and Beacon architecture.
 - (b) Buildings shall be designed in consideration of appearance from all vantage points. Blank or long, uninterrupted walls, both horizontally and vertically, and tinted or mirrored windows shall be avoided. Commercial storefronts and restaurants shall have a minimum of 70% glass frontages.
 - (c) Architectural elements shall be used to provide visual interest, reduce apparent scale of the development, and promote integration of the various design elements in the project.
 - (d) Groups of related buildings shall be designed to present a varied, yet compatible appearance in terms of architectural style.
 - (e) Building facade setbacks shall be varied to the extent practicable in order to provide an interesting interplay of light, shadows, colors, window openings, terraces, balconies and cornice features.
 - (f) Appurtenances on buildings and auxiliary structures, such as mechanical equipment or water towers, carports, garages or storage buildings, shall receive architectural treatment consistent with that of principal buildings.
 - (g) The ground floor of buildings for residential use, whenever practical, shall may be designed so as to be convertible in the future to nonresidential use. This shall include, but shall not necessarily be limited to, the inclusion of including floor-to-ceiling dimensions appropriate to future nonresidential usage of the buildings.
- (6) Energy efficiency. The plan for the Fishkill Creek development project shall be designed and arranged in such a way as to promote energy efficiency to the maximum extent practicable for all buildings, such as taking advantage of passive solar and solar panel opportunities.

- (7) Landscaping, screening and buffering. A comprehensive landscaping plan, including proposed streetscape and rooftop elements, shall be submitted for the project.
- (a) Sidewalks, open spaces, parking areas and service areas shall be landscaped and/or paved in a manner which will harmonize with proposed buildings. Materials for paving, walls, fences, curbs, benches, etc., shall be attractive, durable, easily maintained and compatible with the exterior materials of adjacent buildings.
 - (b) The Planning Board may require street trees, buffer landscaping, fencing or screening to separate land uses and to screen parking lots or structures, utility buildings, refuse collection areas, cooling systems and other similar installations and features.
 - (c) All plants, trees and shrubs shall be installed in accordance with a planting schedule provided by the developer and approved by the Planning Board. Landscape materials selected shall not include invasive species, and shall be appropriate to the growing conditions of the environment and this climatic zone.
 - (d) Green roofs and rooftop terraces and gardens are encouraged for visual and environmental reasons.
- (8) Lighting. A comprehensive lighting plan which includes pedestrian-scale lighting shall be submitted for the project. Streets, drives, walks and other outdoor areas shall be properly lighted to promote safety and encourage pedestrian use. All exterior lighting for the project shall be directed downward with full cut-off fixtures or otherwise appropriately shielded and designed to minimize excessive light. Such lighting shall have an attractive appearance compatible with the overall project design and FCD character. Lighting type, number and locations shall be subject to Planning Board review and approval as part of the site plan review process.
- (9) Signage.
- (a) All signs shall be planned and designed in accordance with an overall comprehensive signage plan, which shall be subject to Planning Board review and approval as part of site plan review process.
 - (b) All signs shall be of a size and scale as determined appropriate by the Planning Board to accomplish their intended purpose.
- (10) Vehicle, bicycle and pedestrian circulation system and traffic access. The rights-of-way and pavement widths for all internal streets, drives, walks or other accessways for vehicles, bicycles and/or pedestrians shall be determined on the basis of sound current planning and engineering standards, which shall accommodate projected demand but minimize impervious surface to the maximum extent practicable and be narrow enough to slow traffic speeds. Commercial uses should be pedestrian oriented and assist in building walkable streets and a connection to downtown Beacon.
- (11) Public access for greenway trails.
- (a) While a Fishkill Creek development will require certain private elements for the security and benefit of its residents and property owners, a Fishkill Creek development shall provide public pedestrian access in a manner which enhances existing public access opportunities, and coordinates such public access with existing or anticipated opportunities for public access on adjacent lands to facilitate future linkages in a continuous pedestrian path system.
 - (b) In order to foster the purposes of this article, in order to implement the policies expressed in the City's Comprehensive Plan and the Fishkill Creek Greenway and Heritage Trail Master Plan, including the creation of greenway trails, and in order to increase public pedestrian access to and the potential for enjoyment of Fishkill Creek, each FCD project shall show a dry-land right-of-way or easement for the enjoyment of the public, which easement shall be not less than 20 feet in width traversing the entire length of the site unless configured otherwise by the Planning Board during the site development plan review process. To the maximum extent practicable, said right-of-way or easement shall be integrated so as to create linkages with existing and anticipated public pedestrian and bicycle trail systems on adjacent lands.

(c) The trail within said right-of-way or easement shall be constructed by the project developer and shall be maintained by the property owner. Said trail may be located in the Fishkill Creek buffer.

(12) Off-street parking and loading.

(a) General parking requirements.

[1] Off-street parking and loading areas shall be designed with careful regard to their relation to the uses served. They shall be coordinated with the public street system serving the project in order to avoid conflicts with through traffic or obstruction to pedestrian walks.

[2] Parking and loading facilities not enclosed in structures shall be suitably landscaped and/or screened as determined appropriate by the Planning Board. Parking lots and structures shall be located to the rear, side, or under the ground floor of buildings, whenever possible, and screened from street views.

[3] The construction of any proposed parking structures to accommodate the FCD project shall be integrated into the development.

(b) Parking requirements. The FCD District parking requirements shall be in accordance with § 223-26 F of this chapter, except that the requirements in ~~said section~~ § 223-26 F shall be both the minimum and maximum requirements for a FCD project.

(c) With respect to any building, structure or use for which the required number of parking spaces is not specifically set forth in § 223-26 F of this chapter, the Planning Board, in the course of site plan review, shall determine the number of off-street parking spaces required, which number shall bear a reasonable relation to the minimum off-street parking requirements for specified uses as set forth in the above schedule.

(d) Up to ~~30~~ 20% of the required parking may be designated for compact automobiles at the discretion of and in accordance with standards as determined by the Planning Board.

(e) Off-street loading. Off-street loading shall be provided as the Planning Board may find appropriate.

(13) Utilities and services.

(a) Underground lines. All on-site television, power and communication lines, as well as all on-site water, sewer and storm drainage lines, shall be installed underground in the manner prescribed by the regulations of the government agency or utility company having jurisdiction. Any utility equipment to be necessarily located aboveground shall be adequately screened from view in an attractive manner.

(b) Approval of appropriate jurisdictions. All buildings within Fishkill Creek development projects shall be served by water supply, sanitary sewage and stormwater drainage systems as approved by the appropriate government agency or agencies having jurisdiction thereof. Stormwater drainage shall minimize siltation and nonpoint source discharge of salted areas and any other pollutants. Best management practices shall be required.

(c) Television hookups. Television hookups shall either be by cable television or a central antenna system designed to minimize adverse aesthetic impact and shall not be by multiple individual satellite dishes.

(d) Refuse collection. The Fishkill Creek development project shall provide an adequate means of storing refuse between collections, and shall comply with all applicable City requirements, including recycling requirements. Such storage systems shall be designed to minimize adverse aesthetic impact.

(e) Cooling systems. Cooling systems shall be designed so as to minimize adverse aesthetic impact.

(f) Placement of utilities. Where possible, all utilities shall be placed within the right-of-way, ~~and all possible steps shall be taken to avoid the placement of utilities under the pavement, in order to assure ease of future maintenance.~~

- (g) Utility deficiencies. The FCD project shall address all known utility deficiencies which have a relationship to the project, the project's impact upon said utilities, and the project's implementation and/or financing of its fair share of the mitigation of said impact and deficiencies, including the dedication of utility easements to the City.
- (14) Floodplain. The Fishkill Creek development project shall comply with the applicable provisions of Chapter 123, Flood Damage Prevention, of the City Code. All habitable stories shall be elevated above the one-hundred-year floodplain elevation.
- (15) Historic preservation. Every reasonable effort shall be made to preserve and/or incorporate significant historic structures and artifacts as part of the FCD project.
- (16) Fishkill Creek vegetative buffer.
 - (a) A protective creekside buffer measured from the top of the creek bank shall be observed. "Top of the creek bank" shall mean the highest elevation of land which confines Fishkill Creek.
 - (b) The protective creekside buffer dimension in § 223-41.15 J of this chapter is a minimum and may be increased if necessary to mitigate the impact of the proposed development.
 - (c) With respect to development near the creekside buffer, the site plan shall address the following requirements:
 - [1] Site development shall be fitted to the topography and soil so as to create the least potential for vegetation loss and site disturbance.
 - [2] Vegetation removal shall be limited to that amount necessary for the development of the site. Protection of tree crowns and root zones shall be required for all trees planned for retention.
 - [3] Vegetation indigenous to the site or plant community shall be restored in areas affected by construction activities. Temporary vegetation, sufficient to stabilize the soil, may be required on all disturbed areas as needed to prevent soil erosion. New planting shall be given sufficient water, fertilizer and protection to ensure reestablishment.
 - (d) All approved measures to mitigate the loss or impact to riparian habitat shall become conditions of approval of the project.
 - (e) The creekside buffer shall be protected by a conservation easement and/or covenants and restrictions which provide for the preservation of existing and proposed vegetation within said buffer.

~~§ 223-41.14 Definitions.~~

~~The following definitions are unique to this Article IVC. If any conflict exists between the definitions contained in this article and the general definitions and provisions contained elsewhere in this chapter, or any amendments thereto, then for the purposes of any development pursuant to this article, the definitions contained herein shall govern.~~

BUILDING HEIGHT

~~The vertical distance of a building, measured from the average elevation of the finished grade adjacent to a street, to the highest point of the roof if the roof is flat (excluding elevator structures, solar panels and other accessory rooftop features), or to the midpoint between the eaves and the highest point of the roof if the roof is of any other type. Where there is more than one street adjacent to a building, the average elevation of the finished grade of the lower street shall be used as the base elevation for measuring building height. Only those stories above grade are counted towards maximum height in stories or feet; a maximum of one story below grade used as a basement, cellar parking, underground parking or parking under buildings will not count towards total height or number of stories.~~

NONRESIDENTIAL FLOOR AREA

Floor area of permitted principal uses other than dwelling units and artist live/work spaces.

§ 223-41.154 Bulk regulations.

- A. Minimum size of FCD site: four acres. Notwithstanding the above, the owner of less than four acres of land may apply for approval of a FCD project, where such land is adjacent to a proposed, approved or constructed Fishkill Creek development project.
- B. Maximum number of dwelling units per acre of gross lot area: 11. Notwithstanding the above, the maximum number of dwelling units shall be increased by one unit per gross acre to a maximum of 15 units per gross acre, based on the amount of nonresidential floor area, as defined in this article, which is built out concurrently with the residential development of the site. For each additional dwelling unit built, 1,000 square feet of nonresidential floor area must be built (for example, 10 additional dwellings units shall require the concurrent development of 10,000 square feet of nonresidential floor area). Any approvals granted for an FCD project with such increased density shall require that the issuance of the building permits for the residential development are contingent upon the diligent construction of the nonresidential portion of the project. ~~Such increased density may also be granted by the City Council for the voluntary and guaranteed inclusion in the project of desirable environmental, transportation or other benefits which would not otherwise be required of the project, as determined at the sole discretion of the City Council.~~
- C. Maximum dwelling unit size: 2,000 square feet of gross floor area.
- ~~D. Maximum floor area ratio of commercial space: 1.0.~~
- D. Maximum building coverage, including parking structures: 35%.
- E. Minimum open space: 30%.
- F. Maximum building height: ~~2 1/2 stories and 35 feet, except that height may be increased to a maximum of 3 1/2 stories and 45 feet, provided that such buildings are set back at least five additional feet from Fishkill Creek for each one foot increase in height~~ 3 stories and 40 feet.
- G. Minimum building setback from edge of pavement of public and private streets: 12 feet.
- H. Minimum frontage of overall FCD site on public street right-of-way: 50 feet.
- I. Minimum setback from and buffer width along Fishkill Creek: an average of 50 feet, but not less than 25 feet at any point, except with respect to the existing building located at 555 South Avenue located in the Historic District and Landmark Overlay Zone, in which case the minimum setback and buffer requirement shall not apply.

